

## **Address by the Ombudsman for Children to the Oireachtas Committee on Health and Children**

**17 July 2013**

I welcome the opportunity to address the Committee on the issue of youth justice. Given my direct accountability to the Oireachtas, I thought it most appropriate to raise my concerns in relation to the detention of children in Oberstown and the transition from using St Patrick's Institution as a place of detention for 16 and 17 year old boys with this Committee. I understand that the Committee has had occasion to discuss the detention of children in Oberstown with the Chair of the Board of the detention schools.

It may be helpful to the Committee if I set out some of the background to my comments today. When the Oireachtas passed the Children Act in 2001, it put in place a modern youth justice framework incorporating a number of fundamental children's rights principles. These include the need to divert young people away from the criminal justice system as much as possible, the use of community-based sanctions and using detention as a measure of last resort.

I wish to acknowledge the most recent action taken by the Director of the Irish Prison Service and the Minister for Justice in closing St. Patrick's Institution. Although this is a welcome development, we must not forget that calls to close St Patrick's Institution have been made for 28 years since the publication of the Report of the Committee of Inquiry into the Penal System chaired by TK Whitaker.

As you know, in 2009 I took the unusual step of consulting with 35 people under 18 in St Pat's to find out their experience. This was unusual in the sense that the Ombudsman for Children Act 2002 excluded me from accepting complaints from children in St. Pat's. However, an alternative provision of the act gave me the authority to consult with any group of children and young people; to highlight matters of concern to children and young people themselves; and to encourage public bodies to respect children's rights.

It was abundantly clear to me when my team and I talked to the young people in St. Patrick's back in 2009, that the problem was not merely one of accommodation but a culture that was detrimental to the young people detained there.

I had no previous experience of prisons before I entered St. Pat's. I found it oppressive and the tension between young people and some staff was palpable. It felt like an intimidating environment for the young people. I can recall the expressions of fear and anxiety from some young people very vividly. Some of the children reported feeling unsafe, cold and hungry. One described how it felt to be locked up for 23 hours in a cell on protection. 'F..king freezing! A padded wall, no clothes, only a pair of Y-fronts.....for days.'

At the conclusion of that project, I called for the closure of the prison as a place of detention for young people. There was further questioning by international monitors - namely the UN Committee Against Torture and the Committee for the Prevention of Torture (Council of Europe) - on the findings of our report and the conditions in St Pat's. We must reflect on why it has taken twenty

eight years to finally get to the point of closure of an institution that has been described by the chaplains as a monument to State failure.

The Inspector of Prisons Judge Michael Reilly's 2012 report, published earlier this month, also found very disturbing incidents of non-compliance with human rights standards. For example, one prisoner had been moved to St. Patrick's that day. The cell was cold and dirty. The toilet was filled with excrement. The Inspector found the young person crying in bed and had been refused permission to make a telephone call to his father. He described the prisoner as "afraid."

I hope that as we move to a new era in relation to youth justice in Ireland with the closure of St Patrick's Institution, we will also see an end to the culture of disbelief when faced with such accounts .

The Government has decided that Wheatfield Prison will be used in the interim to accommodate 17 year olds. I visited Wheatfield Prison last week and met with the Governor and Director of the Irish Prison Service in relation to the proposed move. It appeared to me that the facilities and the culture in Wheatfield Prison were significantly better than those in St Patrick's Institution. However, we must not lose sight of the fact that irrespective of the conditions obtaining in the prison, an adult prison such as Wheatfield is no place for those under the age of 18; the placement of young people in Wheatfield Prison must remain a temporary, short-term measure.

Moving on now to the Oberstown project.

Oberstown is designed to be a children's detention school rather than a prison. This means that rather than being in a custodial environment, children should receive therapeutic intervention and education that will enable them to return as active members of our communities. When the Minister for Justice, Equality and Defence established the Thornton Hall Project Review Group in 2011, I made a number of recommendations to the Group. Those recommendations included: moving 16 and 17 year old boys to Oberstown on a phased basis to afford staff the opportunity to become accustomed to the new cohort of young people; putting in place a Project Manager to oversee the transition and act as a link between St Patrick's Institution and Oberstown; and enhancing the skills and capacity of staff in Oberstown as part of the transition.

One of the reasons I emphasised the importance of putting in place a Project Manager and looking at staff capacity was that I was aware of industrial relations difficulties in the detention schools at that time. A further industrial relations challenge arose when the decision was made to begin detaining 16 year old boys in Oberstown last year. I received a solicitor's letter on behalf of a group of staff in Oberstown setting out their concerns regarding this move, which the group of staff in question were opposed to.

The main concern set out in the letter I received was that staff in Oberstown were not trained to deal with 16 and 17 year old boys. In light of the concern expressed to me regarding the capacity of staff in Oberstown, I was disappointed to read in the Inspector of Prisons' most recent Annual Report that a proposed initiative to have care staff from the detention schools work alongside prison staff in St Patrick's Institution was not facilitated. The skills gained from such a period of work could perhaps have addressed some of the concerns outlined to me regarding staff capacity in Oberstown.

A further concern has come to my attention in the last week regarding the reorganisation of the existing units on the Oberstown campus. This change has arisen from the need for a greater number of beds for boys than had been anticipated; this matter entered the public domain in recent times as a number of judges were not able to remand boys to detention due to a lack of space on the particular days in question. The concerns that have been raised with me in relation to the one girl currently in detention in Oberstown are that: her mobility and recreational opportunities may become restricted; the change of surroundings would have a negative effect on visits by her family; and that the potential mix between boys and girls is a source of anxiety for the young person in question. Although I am not opposed to exploring pragmatic solutions to capacity problems in Oberstown, such solutions must not come at the expense of young people's wellbeing or the need to observe the relevant care standards. We must take care not to place institutional interests ahead of the interests of children.

I do not wish to give an entirely negative assessment of the current situation. The Government has accelerated improvements in the detention of children including: a capital investment for the Oberstown facility, 16 year old boys are no longer being placed in adult prisons, the extension of my investigative remit since July 2012 and the closure of St Patrick's Institution.

All of these are significant developments that should make young people's experience of detention less intimidating. The punishment for the children's crimes is the loss of their liberty, not a sentence to live in a state of fear.

My hope is that the momentum will be maintained and I believe that the Oireachtas has an important role to play in this regard. The roadmap for the development of child-based youth justice system was set out by these Houses in the Children Act 2001. The current reforms are an integral part of realising that vision. I trust that the Committee will continue its engagement with the key stakeholders in this area to ensure that the reform process does not falter.

## Annex 1

### Chronology of work by the Ombudsman for Children's Office on the issue of St Patrick's Institution

- 2005** First Annual Report of the Ombudsman for Children to the Houses of the Oireachtas recommends that St Patrick's Institution be included in the investigatory remit of the Ombudsman for Children.
- 2006** Ombudsman for Children's report to the United Nations Committee on the Rights of the Child reiterates this recommendation and highlights the fact that the continued detention of young people under the age of 18 in St Patrick's Institution is contrary to Ireland's international human rights obligations.

UN Committee on the Rights of the Child expresses concern at the detention of 16 and 17 year old boys in St Patrick's Institution and recommends that they not be detained in adult facilities. The Committee further recommends that the investigatory remit of the Ombudsman for Children be extended to allow this group of young people to submit complaints under the Ombudsman for Children Act.

The Ombudsman for Children also raises these concerns with the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment(CPT) in the context of its country visit to Ireland in late 2006. The CPT notes the Government's intention to cease detaining young people in St Patrick's Institution and recommends in the meantime that appropriate measures be taken to ensure adequate separation between children and young adults in St. Patrick's Institution.

- 2007** Ombudsman for Children publishes baseline research on the barriers to the realisation of children's rights in Ireland. Children in conflict with the law are identified as a group of young people facing multiple barriers to the realisation of their rights; the poor conditions in St Patrick's Institution – particularly with respect to education and mental health services – are highlighted.
- 2009** The Ombudsman for Children commences a project with young people detained in St Patrick's Institution. The aim of this project is to identify the issues facing the young people under 18 detained in St Patrick's Institution through consultation with them and to bring these issues to the authorities within the Institution and the wider Prison Service in order to improve the situation for the young people.
- 2011** The Ombudsman for Children publishes report on the consultation with young people in St Patrick's Institution. The report highlights concerns and sets out recommendations for change in the areas of:
- Committal, Orientation and Sentence Planning
  - Separation from Adults
  - Accommodation
  - Health

- Education, Training and Recreation
- Contact with Family and Community
- Safety, Protection and Disciplinary Measures
- Complaints and Inspections
- Rehabilitation and Reintegration

Ombudsman for Children calls for closure of St Patrick's Institution as a place of detention for those under the age of 18.

United Nations Committee Against Torture expresses concern regarding the findings of the Ombudsman for Children in relation to young people detained in St Patrick's Institution. The Committee recommends that the State proceed without delay with the construction of the new national children detention facilities at Oberstown and that the State take appropriate measures to end the detention of children in St Patrick's institution in the meantime. The Committee further recommends that the Ombudsman for Children's investigatory remit be extended to include young people in St Patrick's Institution.

The Ombudsman for Children writes to the Thornton Hall Project Review Group outlining a number of recommendations regarding the transition from using St Patrick's Institution as a place of detention for young people under the age of 18. Those recommendations relate to matters such as initiating a phased transition, the structure for managing the transition and enhancing the skills of staff in the detention schools in preparation for the new cohort being detained in Oberstown.

The Ombudsman for Children raises the transition from using St Patrick's Institution for 16 and 17 year old boys with the Council of Europe Commissioner for Human Rights in the course of his country visit to Ireland. The Commissioner recommends that those under the age of 18 no longer be detained in St Patrick's Institution and that a phased transition of 16 and 17 year old boys from St Patrick's Institution begin.

- 2012** The Ombudsman for Children's report to the Oireachtas on the operation of the Ombudsman for Children Act reiterates recommendation that St Patrick's Institution be included in the investigatory remit of the Office.

Report of the Inspector of Prisons on St Patrick's Institution confirms and echoes findings of project carried out by the Ombudsman for Children's Office with young people detained in St Patrick's Institution.

Investigatory remit of the Ombudsman for Children extended from July 2012 to include young people detained in St Patrick's Institution.

- 2013** Most recent Annual Report of the Ombudsman for Children to the Houses of the Oireachtas outlines concerns arising from complaints regarding St Patrick's Institution and also concerns regarding the transition in Oberstown.

Inspector of Prisons publishes 2012 Annual Report and calls for closure of St Patrick's Institution. Minister for Justice, Equality and Defence accepts recommendation.